

7 IN THE HIGH COURT OF KARNATAKA AT BANGALORE.

Dated this the 4th day of June 1998.

Before

THE HON'BLE MR. JUSTICE KUMAR RAJARATNAM

WRIT PETITION No. 11616 OF 1998.

Between:

Sri B.A. Kulkarni
Major, R/o at No.181
Chidambarnagar,
Belgaum. .. Petitioner.

(By Sri N.R.Krishnappa, Advocate)

And:

1. The Karnataka Appellate Tribunal
III Floor, M.S.Building
Vidhana Veedhi Bangalore-1
by its Chairman.
2. The Asst. Registrar of Co-operative
Societies, Belgaum Sub division
Belgaum.
3. The President,
The Chidambarnagar Co-operative
Housing Society Ltd., Chidambarnagar
Belgaum.
4. The Secretary, The Chidambarnagar
Co-operative Housing Society,
Chidambarnagar, Belgaum. .. Respondents.

(By Sri B. Veerappa, HCGP for R-1 and 2.)

This writ petition is filed under Articles 226 & 227 of the Constitution of India praying to direct the first respondent to pass orders on I.A. filed by the petitioner u/s.151 CPC questioning the maintainability of the appeal at Annexure 'C'. Further to quash at Annexure E dtd: 9-3-98 by R-1.

This writ petition is coming on for Prly. hearing this day, the Court made the following:

O R D E R.

1. The petitioner is a member of the fourth respondent-society. The president of the society raised a dispute in Dispute No.AR/9/ABN/1172/90-91, at Annexure B. The second respondent dismissed the dispute because the society did not prosecute the dispute.

2. Aggrieved by that the president filed an application to set aside the order passed by the second respondent and the same was dismissed. Consequently the dispute was also dismissed. Aggrieved by the dismissal of the dispute the ~~third~~ respondent filed an appeal in No.443/93 before the first respondent. The appeal was allowed and the matter was remitted back to the second respondent. The matter went before the second respondent. Once again the society did not prosecute the dispute, and the dispute was dismissed for non-prosecution.

3. Aggrieved by this, the third respondent filed an applicati on for setting aside the exparte

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order. The same was also dismissed. Consequently, the dispute was dismissed.

4. Aggrieved by this the third respondent filed an appeal. The appellate ^{authority} ~~authority~~ although found fault with the conduct of the society in not diligently prosecuting the dispute. However, the appellate authority held that since the allegations of financial irregularities are involved the matter ought to be remitted back for fresh disposal in accordance with law.

5. Learned counsel for the petitioner submitted that before the appellate authority an I.A. was filed by which it was submitted that the ex-president has no authority to file an appeal and it was the secretary who ought to have filed the same. According to the learned counsel for the petitioner this I.A. was not considered while dealing with the appeal.

6. Learned counsel for the petitioner further submitted that he has suffered enough at the hands of the society since 1990 and neither the society nor the secretary is interested ~~diligently~~ ^{diligently} in prosecuting the dispute. Therefore, it would be sheer waste of time for the appellate authority to remand this matter back, before the second respondent.

He also submitted technically the president has no locus-standi to file an appeal. However the appellate authority the first respondent having remanded the matter back for fresh consideration, it would not be proper for this Court to interfere with the order passed by the first respondent. Since it was made clear by the first respondent that all the contentions are left open including the one with regard to the maintainability as to who should prosecute the dispute *it is not necessary to disturb the remand order.*

7. In that view of the matter no interference is called for with respect to the order passed by the first respondent. The matter is remitted back to the second respondent in accordance with law.

8. There will be a direction directing the second respondent to give one last opportunity to the society to prosecute the dispute if they are *seriously* interested. *in the matter* The second respondent shall complete the enquiry and pass orders on the dispute within a period of two months from the date of receipt of this order. *failing* *in the facts and circumstances* of the case the dispute shall stand automatically dismissed without further ado.

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9. The Writ Petition is disposed of accordingly.
There will be no order as to costs.

Sd/-
JUDGE

